FAMILY MAINTENANCE ENFORCEMENT PROGRAM

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STATUS REPORT
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WE OWE IT TO OUR CHILDREN

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FAMILY MAINTENANCE ENFORCEMENT PROGRAM

"WE OWE IT TO OUR CHILDREN"

The Family Maintenance Enforcement Program is a vital part of the B.C. Government's ongoing commitment to strengthen families and provide better access to justice for all British Columbians.

I am proud of what this Program has accomplished in just one year. Through the remarkable efforts of dedicated staff, thousands of creditors from across the province are now having their maintenance payments automatically monitored and enforced by the Program.

This report outlines the Program's activities and accomplishments for 1989 and some of the challenges we face in 1990. The Family Maintenance Enforcement Program recognizes we owe it to our children to ensure they obtain financial security, both now and in the future.

Bud Smith

The Honourable Bud Smith, Q.C.
Attorney General
January 1990

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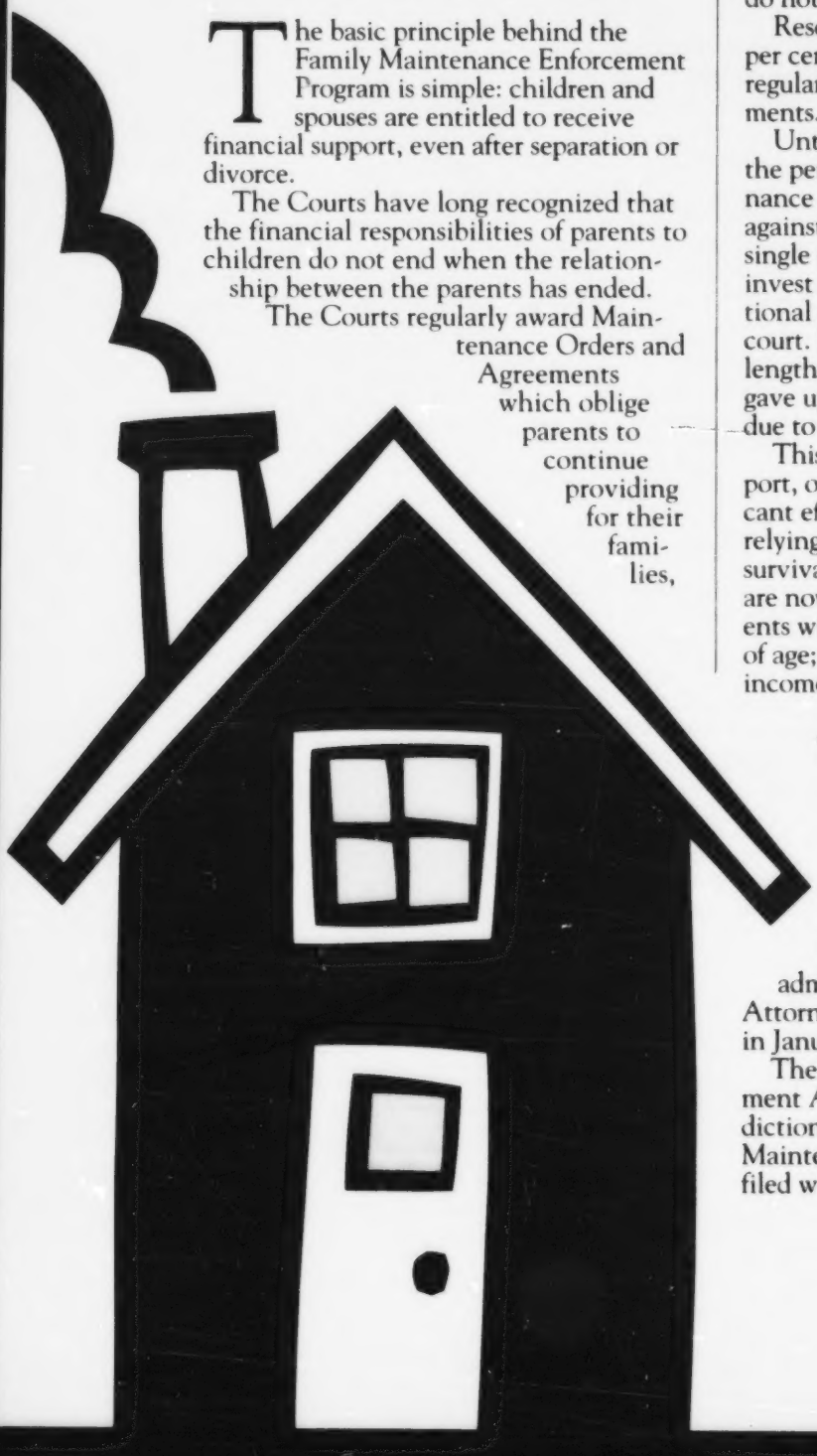
BACKGROUND

THE PROBLEM

The basic principle behind the Family Maintenance Enforcement Program is simple: children and spouses are entitled to receive financial support, even after separation or divorce.

The Courts have long recognized that the financial responsibilities of parents to children do not end when the relationship between the parents has ended.

The Courts regularly award Maintenance Orders and Agreements which oblige parents to continue providing for their families, and many do so willingly. Most, however, do not.



Research studies estimate that up to 85 per cent of all former spouses in Canada regularly default on their support payments.

Until recently, it was up to the creditor the person entitled to receive the maintenance payments – to take legal action against the debtor. The creditors – largely single mothers on low incomes – had to invest their own money, time and emotional energy in taking their debtors to court. Most of them could not afford a lengthy and strenuous court battle, and gave up trying to recover the payments due to them.

This unwillingness to pay family support, or to fight for it, has had a significant effect on the number of families relying solely on income assistance for survival. In British Columbia alone, there are now an estimated 71,700 single parents with at least one child under 18 years of age; 36,000 – 50 per cent – are on income assistance.

THE RESPONSE

The Government of British Columbia officially proclaimed the Family Maintenance Enforcement Act in September 1988. The Family Maintenance Enforcement Program (FMEP), administered by the Ministry of Attorney General, began province-wide in January 1989.

The B.C. Family Maintenance Enforcement Act gives the FMEP exclusive jurisdiction to monitor and enforce Maintenance Orders and Agreements filed with the Program throughout B.C.

T A B L E 1

Average Amount of Maintenance Orders Monitored By the FMEP

Orders	Average Per Month
Divorce Act	$334.
Provincial Court	$261.
1 child	$160.
2 children	$326.
3 or more children	$538.
Spouse and 1 child	$474.
Spouse and 2 children	$758.
Spouse and 3 or more children	$846.
All Orders	$274.

The Act gives the FMEP full discretion to enforce "all or part of any arrears of maintenance" by taking any steps it considers advisable. The Act confirms that maintenance payments take precedence over other unsecured debts, and restates the legal principle that, unless proved otherwise, the debtor is presumed to have the ability to pay. The Act also safeguards the legal rights of debtors by ensuring they receive notice of the Program's involvement and of enforcement actions taken, and are given an opportunity to present their side of the case.

The objectives of the Family Maintenance Enforcement Program are straightforward:

To increase the number of debtors who pay their maintenance as required.

To increase the emotional and financial stability of families by collecting their maintenance payments.

To change the attitudes of both debtors and the general public, so that the willing payment of family maintenance becomes the rule, not the exception.

To place financial responsibility for family maintenance on the debtor rather than on the public through income assistance.

HOW THE PROGRAM WORKS

ENROLMENT

Anyone living in B.C. with a Maintenance Order or Agreement from any Court in Canada is eligible to enroll in the FMEP as a creditor, whether or not the Order is in default. There are no fees of any kind.

The Program is optional except for those creditors receiving income assistance. All creditors must first complete a Filing Kit, available either from the FMEP or from Court Registries and Government Agent's Offices across the province.

Once the Filing Kit is complete – with certified copies of all court Orders and other relevant documents – both creditor and debtor receive a formal Notice of Filing. This Notice states that the Maintenance Order is now being monitored and, if in default, enforced by the Program. The debtor is told to make all further payments to the Program, these are recorded and mailed to the creditor within twenty-four hours. The FMEP automatically takes enforcement action to recover any missed

One creditor wrote to the FMEP that she can "now relax and not worry how to make ends meet" after her former spouse repaid arrears of $1,700 in cash.

payments and arrears owing from before the creditor joined the Program.

Enforcement

Enforcement action can take several different forms. The Program will first contact the debtor to see if he or she will voluntarily bring the maintenance payments up to date. If voluntary payment cannot be arranged, the FMEP will then consider administrative enforcement measures, such as a Notice of Attachment or a Garnishment Order. These require anyone – an employer or the Unemployment Insurance Commission, for example – who owes the debtor money to pay a specified portion of that money directly to the Program for the creditor. Additional action to secure the Maintenance Order or Agreement might include Land Registration, which ensures a debtor's property cannot be sold without paying any arrears which might be owing.

If administrative enforcement on arrears is ignored, disputed, or proves to be impractical, the FMEP will bring the debtor to Court. The Court can then take additional action to enforce the payment of arrears, up to and including imprisonment if the original Enforcement Order includes provision for time in jail when the payments ordered are not made.

Only the Court can reduce or forgive payments and arrears. Debtors often apply to the Court to vary maintenance downward and to forgive past arrears. If the FMEP believes this is inappropriate, the Program will act on behalf of the creditor to defend his or her right to those arrears. Lawyers acting for the Program have been highly successful in preventing the reduction of maintenance arrears.

In one case, the FMEP went to extraordinary lengths to find a debtor's hidden assets. The Program arranged with the debtor's bank for arrears of $13,700, outstanding since 1986, to be paid to the creditor.

The FMEP goes beyond provincial boundaries. Federal government programs and legislation have made it difficult for debtors to avoid maintenance obligations by moving from one province to another. A federal tracing service provides the Program with debtor location and employment information. Reciprocal agreements with all Canadian provinces, a number of U.S. states and several other countries permit the enforcement of each other's Maintenance Orders.

Administration

The Program is also responsible for requesting traces on missing debtors, for monitoring all payment details as orders expire or children are no longer eligible for maintenance, and for responding to enquiries about Orders from creditors, debtors, lawyers, provincial ministries and other jurisdictions.

When enforcement is not feasible, the Program is responsible for making the case temporarily "inactive," and for reviewing it every four months to see whether action can now be taken. When creditors are threatened with violence, the Program will act in their best interest including informing the creditors before any enforcement action is taken.

All information received by the program is confidential; it is used only to monitor payments and enforce Maintenance Orders and Agreements.

YEAR ONE:
A YEAR OF ACCOMPLISHMENT

ORGANIZATION

In its first year of operation, the FMEP has developed an organizational structure that is both effective and efficient.

The FMEP is operated by Themis Program Management and Consulting Ltd., under contract to the Ministry of Attorney General and reporting to the Director of Maintenance Enforcement, a public servant designated by the Attorney General. The FMEP staff, based in Provincial Headquarters, three regional and two specialist offices, work to ensure uniform enforcement services across the province.

The Provincial Headquarters Office provides province-wide administrative support, co-ordination and strategic planning. Program enrolment for the province is handled through the Central Enrolment Unit, based in Victoria. A separate unit attached to the Kamloops Regional Office deals with all out-of-province enforcement. In-province enforcement action is decentralized and is handled by the three Regional Offices in Burnaby, Kamloops and Victoria. This decentralization allows each of these offices to co-ordinate easily with other agencies, including the regional Courts, and to respond readily to the particular needs of their surrounding communities.

Three or four managers work in each Regional Office to provide overall direction and supervision. Enforcement teams, consisting of an Enforcement Officer and an Enforcement Clerk, are responsible for the actual case-management. Full-time Program lawyers are used for most Court appearances. An extensive network of retained lawyers provide representation in any Court in the Province. Legal secretaries and clerks handle enquiries and process mail and payments.

STAFFING

The FMEP has a highly motivated and skilled group of ninety-three staff members.

TABLE 2

Program Staff

Office/Region/Unit	Number of Staff
Provincial Office	5.0
Burnaby (Lower Mainland)	34.0
Kamloops (Interior/North)	17.5
Victoria (Vancouver Island)	14.5
Central Enrolment Unit	20.0
Out of Province Enforcement Unit	2.0
Total	93.0

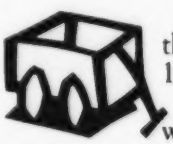
Because the work of systematically monitoring payments and enforcing thousands of Maintenance Orders was new to B.C., the Program had no trained or experienced staff upon which to draw. While basic planning was completed prior to the start of the Program, the FMEP faced the enormous challenge of successfully delivering enforcement services throughout the province using new, untested legislation, with inexperienced staff and untried policies.

Job descriptions, training programs, policy and procedure manuals, work and computer systems had to be developed from the ground up to prepare every staff person to do his or her job effectively.

Efficient personnel, payroll and management systems had to be created and implemented to ensure staff time and energy was devoted to providing direct client services. This ensures that trends and problems can be identified and corrected before they reach unmanageable proportion. Additional systems were needed to quickly generate key indicator statistics and management reports.

Program staff accepted and met the challenges of starting and maintaining a province-wide enforcement system. They have been instrumental in identifying and resolving many problems in the ongoing development of policies, procedures and work systems. The FMEP is committed to improving its training programs so that staff will be better equipped to perform their difficult and challenging work tasks.

ENROLMENT



As of December 31, 1989, the FMEP had opened 14,537 files.

Of that number, 7,466 were fully enrolled and were receiving monitoring and enforcement services. 2,290 cases were in various stages of processing for enrolment. 307 cases had withdrawn from the Program. Most of the remaining 4,474 cases were closed without being enrolled because these people currently receive their payments through the Courts. Since the B.C. Courts are in the process of advising these clients that the Courts will no longer handle regular maintenance payments, their files will be reopened on request, and most are expected to join the Program.

The Program is continuing to receive new applications at the rate of 600 per month.

The FMEP located one debtor who had defaulted on maintenance payments for over 13 years. This debtor is now voluntarily paying $28,500 in arrears.

Land Registration has proved to be a remarkably successful method of maintenance enforcement. In one case, a creditor had to be paid $50,000 in arrears before the debtor's property could be sold.

The major problem the FMEP faced in its first year was enrolling the thousands of people who wished to join in a quick and timely manner. Because this is the only Program in Canada that obtains all the Orders and prepares the initial Affidavit of Arrears for the creditor, the enrolment process is both complex and time-consuming. It does, however, mean that creditors do not have to spend their own time and money to provide or prepare the documents.

In June 1989, the FMEP created a Central Enrolment Unit in Victoria to deal with a large enrolment backlog and increase the efficiency of the existing enrolment process. This Unit has 20 staff members, and has been highly successful in enrolling over 5,000 new cases in six months. It now takes an average of six to eight weeks to enroll a case – to collect all necessary Court Orders and financial information – and another four weeks to prepare an Affidavit to enforce arrears.

PAYMENT PROCESSING AND MONITORING

The FMEP is an "opt-in" program: unless a client is on income assistance, he or she must choose to enroll. Since people who have always received their maintenance payments regularly tend not to enroll, the Program has a higher proportion of cases in arrears than do most other programs which automatically enroll all Maintenance Orders. This does, however, mean that the $4 million obtained by the Program is money that might otherwise never have been paid.

The pattern of payments, using the trend from September to November 1989 is encouraging.

T A B L E 3

Payments Received September — November, 1989

Month	Total $	% of Payments Due
Sept.	*500,225*	*45% (2,232)*
Oct.	*638,000*	*46% (2,777)*
Nov.	*768,830*	*46% (3,342)*

Maintenance payments in B.C. have been estimated to be as high as 85 per cent in arrears. Even though the FMEP is in its early stages, it has already managed to achieve a payment rate of 46 per cent. Payment rates are expected to continue to rise.

Payment processing must quickly deal with problem payments — those made out incorrectly, sent to the wrong address, or payable to the Program rather than the creditor. Processing must also be able to reverse payments when a creditor advises staff that the cheque was NSF, and to hold payments where a legal time limit has not been met or a creditor has failed to tell the Program of a change of address.

Plans to increase the speed and accuracy of payment processing and monitoring are underway. A Central Payment Processing Unit will open in Spring 1990. This Unit will be responsible for the receipt, transmission and recording of payments for all clients.

ENFORCEMENT

The Program always attempts to use administrative rather than Court enforcement to obtain past due payments. Administrative enforcement is both less expensive and less time-consuming than Court action.

Over the past year, administrative enforcement has taken four basic forms: voluntary payment arrangements, default letters, Notices of Attachment and Land Registration.

TABLE 4

Administrative Enforcement

Type of Action	Average Per Month
Voluntary Payment Arrangements	60
Default Letters	260
Notices of Attachment	40
Land Registration	50
Total	410

The number of administrative enforcement actions has steadily increased each month. As staff become more experienced, processing is streamlined, and computer-generated documents become available, this action will increase even more.

For many cases this year, a Notice of Attachment quickly ensured that debtors began to pay past arrears and that all new payments were received on time. Registrations against land have also proved successful in obtaining payment of substantial arrears. Court action is used by the Program only when administrative enforcement is not practical, and for defending a creditor when a debtor brings an application to vary the amount specified in the original Maintenance Order. As with administrative enforcement, the number of Court actions is also steadily increasing each month.

TABLE 5

Court Enforcement

Type of Action	Average Per Month
New Default Hearings	86
New Applications to Vary Defended	25
Court Appearances	170

The Out of Province Enforcement Unit currently handles 963 cases where the debtor lives outside of B.C. This Unit registers debtors in their own jurisdictions through reciprocal agreements; enforcement action is taken by the Court or Program in the debtor's own province. The FMEP receives and transmits payments from the agency enforcing the Order, and provides the creditor with information on the progress of the case.

As of December 31,1989, the Program was handling 1,094 cases where the creditor lives outside of B.C., but the debtor lives within the province. Once documentation is complete, payment monitoring and enforcement for such cases is identical to that where both parties live in the province.

As soon as one debtor received a Notice of Filing from the FMEP, he paid $2,100 in arrears in two lump sums, and prepaid the next month's regular maintenance. The creditor reported that this was the first time in 10 years that the Order had been paid in full.

YEAR TWO:
THE CHALLENGES AHEAD

ENROLMENT

The Central Enrolment Unit, operating out of the Victoria Regional Office, is currently developing simplified enrolment forms. The Program is planning to produce a one-page basic application form, to be supplemented by another one or two-page form when and if an Affidavit of Arrears is prepared.

In the next year, the FMEP will work to meet a high standard of enrolment processing, where every new case is enrolled within three weeks of receiving a completed Filing Kit, with all documents in order.

PAYMENT PROCESSING AND MONITORING

In Spring 1990, a Central Payment Processing Unit will commence operation. This unit will receive, distribute, record and adjust all payments made to the Program across the province. This will reduce the potential for errors and will ensure that all payments are entered on the system the same day.

WHY CREDITORS MAY NOT RECEIVE MAINTENANCE

There are times where no matter what the FMEP does, maintenance obligations are not met. The reasons are varied. Some of them are:

- The debtor's whereabouts is unknown.
- The debtor's only income is welfare or the debtor is in jail.
- The debtor ensures there are no assets, wages, or property in their name which can be attached or seized.
- Some debtors would rather quit their jobs and go to jail than obey their Court Orders to pay maintenance.

COMPUTERIZATION

The FMEP's work model relies extensively upon computerization. Major revisions are in progress to make the system more effective, reliable and easier to use.

After the FMEP began enforcement action, one creditor received $10,300 in arrears inside two months. The debtor is now meeting all regular payments.

The system currently has four major functions:

1. To provide the information needed to determine the current status of each case and to make decisions on what action to take.
2. To automatically allocate all monies received and to provide total balances and statements of account.
3. To generate legal documents using the information on the database.
4. To compile statistical and management reports so that the success of the Program as a whole can be monitored and analyzed, and problems identified and resolved.

A master plan and a timetable have already been developed and changes will be implemented in the first quarter of 1990. A larger computer has just been installed to support more users, thereby providing all Enforcement Officers with direct access. This will reduce their dependence on bulky paper files and will speed up enforcement.

PUBLIC AWARENESS AND COMMUNICATIONS

A top priority for the Program in the next year is public awareness. The FMEP is a powerful and effective new force in family law, but not all members of the public have a clear understanding of what it can and cannot do.

Currently, the volume of enquiries from creditors puts an enormous strain on the Program's resources. Specialized Enquiry Clerks have already been placed in the three Regional Offices and a new Enquiry Screen is being added to the computer system to give timely information about payments and enforcement action. In addition, a new communications policy has been developed that will clearly spell out to staff, creditors and debtors alike what information they can routinely expect to receive.

Plans are underway to have the computer system generate an enforcement action summary once or twice a year as a basic information document for the creditor, in addition to the current statement of account which shows payments due and received. The Program is also investigating the use of a call sequencer to let clients know their calls will be taken as soon as an operator is free.

The FMEP is part of the Ministry of Attorney General's initiative to use plain language in documents and brochures used by the public. The Program is currently reviewing all forms, letters and brochures for revision in the next year. All Program communications will be as clear, easy to read and brief as possible.

INTERCEPTING FEDERAL FUNDS

The federal government allows certain funds, such as Unemployment Benefits and Income Tax Refunds, to be garnished. In 1989, certain legislative difficulties prevented the Program from fully using this remedy. These difficulties have now been resolved, and the FMEP is setting up a special task force to issue hundreds of Notices of Attachment to obtain any such money owed to debtors.

TRAINING AND WORKLOAD ANALYSIS

The Program is in the process of systematically analyzing the training needs of current staff. These needs will be dealt with on a priority basis to improve the confidence of staff, and the quality and quantity of work produced.

A major Program initiative is also underway to analyze the work tasks of all jobs. This information will help the FMEP to streamline the workflow and develop improved training materials and programs. Retraining on the use of the new computer system has begun and will continue as major changes to the system are implemented.

The FMEP is also developing performance and time standards for key work functions. These standards are necessary to determine a realistic, manageable caseload for an enforcement team (currently, each team handles 500 – 600 cases).

In an unusual case, one debtor wrote to the FMEP suggesting that he voluntarily make higher payments, to more quickly "catch up on arrears of $1,100 in 11 months."

CONCLUSION

The FMEP's first year has been an exciting one. Exciting because the Program is working — many hundreds of people are now receiving maintenance payments that otherwise would not have been paid. Exciting because there is now in place a good working structure and a highly committed staff dedicated to the objectives of the FMEP.

But this first year has also been difficult. The start-up problems associated with the development and introduction of a major new Program, though only to be expected, have proved extremely frustrating. The inevitable enrolment backlog, experienced by every Maintenance Enforcement Program in Canada, kept many people waiting far too long to get enrolled. Fortunately, through the singular efforts of the FMEP staff, this problem is now all but resolved.

The challenge for the coming year is to streamline workflow, provide more training for staff, and enhance the computer system. The FMEP's goal is to ensure that every case is enrolled and enforcement action taken within a well-defined and reasonable time frame.

The FMEP is in the business of mass enforcement. It is important that both creditors and the public as a whole have realistic expectations of the Program. There is unfortunately no guarantee that all creditors will receive the money to which they are entitled. Not every debtor can be located. Some debtors do not have the money they need; others would sooner go to jail.

Thousands of people are however, benefitting by receiving money they otherwise might not have. This is a vast improvement over the situation one year ago.

In November 1989, one creditor wrote to the Premier:

"Thanks to the Program . . . my back maintenance . . . is now up to date. Not only do I have my needed money, I also feel more self-confident and worthwhile."

APPENDIX:
THE MEIS UNIT

The Maintenance Enforcement Information Search (MEIS) Unit began as a pilot program in 1986. Since November 1988 the Unit has operated out of the Office of the Director of Maintenance Enforcement. Unit staff have statutory authority under the Family Relations Act and the Family Maintenance Enforcement Act to search public databanks to determine the location of missing parents for the purpose of "obtaining, varying or enforcing maintenance, custody, access and guardianship orders."

The agencies authorized to process these tracing requests include Court Registries, FMEP, and the Ministry of Social Services and Housing.

In order to ascertain such things as location, employment and/or assets of a person owing maintenance, searches are conducted through the databanks of such provincial institutions as B.C. Tel, B.C. Hydro and the Motor Vehicles Branch.

When the federal government proclaimed Part 1 of the Family Orders and Agreements Enforcement Assistance Act, the MEIS Unit was able to request federal searches when a provincial search failed to locate a missing person. Federal searches are restricted to enforcement matters relating to maintenance, custody or access. The MEIS Unit also has reciprocal agreements with nine other jurisdictions for tracing services.

The number of search requests received by MEIS has increased from four per day in its early months to 15 – 20 per day now. It can take three months to conclude a search and even longer if a federal search is requested (federal standards are two months).

In 1989, over 3,500 requests were made to the MEIS Unit to conduct searches. Of those completed, the Unit was able to obtain information on 67 per cent.